



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 174749

PRELIMINARY RECITALS

On June 2, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Winnebago County Department of Human Services regarding FoodShare benefits (FS). The hearing was held on July 7, 2016, by telephone.

The issue for determination is whether the agency correctly excluded the children from Petitioner's household for the months of March –May 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. On February 2, 2016, the Petitioner completed a renewal and reported [REDACTED] and [REDACTED], her live-in boyfriend's daughters, in the home. (Exhibit 17)
3. On February 4, 2016, the agency sent the Petitioner a notice, indicating that effective March 1, 2016, her FoodShare benefits would be decreased from \$718.00 per month to \$587.00 per month. (Exhibit 8)
4. On February 8, 2016, the Petitioner called the agency to inquire why her benefits went down. Petitioner was advised it was because [REDACTED]'s Social Security benefits were being counted as part the household income. The Petitioner asked that the children be removed from her case, because there was a custody dispute over the children. (Exhibit 17; testimony of [REDACTED])
5. On February 15, 2016, the agency sent the Petitioner advising her that [REDACTED] and [REDACTED] were removed from her case and that her benefits would be going up to \$737 per month, effective March 1, 2016. (Exhibit 9)
6. On February 16, 2016, the Petitioner reported that her boyfriend won the custody dispute and that she would submit the court order. (Exhibit 17)
7. Petitioner did not submit the court order. (Exhibit 17)
8. On May 4, 2016, the Petitioner called the agency to ask about FoodShare for [REDACTED] and [REDACTED]. (Exhibit 17)
9. On May 5, 2016, the agency sent the Petitioner a notice, indicating that it needed verification by May 16, 2016, of [REDACTED]'s and [REDACTED]'s living arrangement. (Exhibit 10)
10. On May 18, 2016, the agency sent the Petitioner a notice, indicating that her benefits would be ending effective June 1, 2016, because it had not received the requested verification. (Exhibit 11)
11. On or about May 19, 2016, the agency received a letter from an attorney indicating that the Petitioner's boyfriend has placement of the children three weeks of the month and that the mother of the children has them for one week per month. The letter stated that placement of the girls with Petitioner's boyfriend began on or about February 27, 2016. (Exhibit 12)
12. The agency processed the verification on May 20, 2016, but noted a need for verification of a third child's income, because the child would be turning 18 in June 2016. (Exhibit 17)
13. On May 27, 2016, the agency sent the Petitioner a notice advising her that she would be receiving \$877 in benefits for June 2016. (See DHA file)
14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 2, 2016. (Exhibit 1)
15. On June 2, 2016, the Petitioner submitted to the agency a letter from the Social Security Administration indicating that the [REDACTED]'s mother was the payee for [REDACTED]. (Exhibit 13)
16. On June 29, 2016, the agency sent the Petitioner a letter indicating that effective July 1, 2016, she would be receiving \$467 per month in FoodShare benefits. (Exhibit 15)

DISCUSSION

At the hearing, the Petitioner indicated that she filed an appeal because she wants her FoodShare benefits backdated/adjusted for March 2016 through May 2016. Petitioner believes she is entitled to more benefits than she actually received.

On February 16, 2016, the Petitioner called the agency and reported that her boyfriend won the custody dispute and that [REDACTED] and [REDACTED] would be living in her household. The Case Comments indicated that the agency was expecting to receive verification from the Petitioner. (See Exhibit 17)

“If any change is reported or becomes known to the agency, it must be acted upon.” *FoodShare Handbook (FSH)* §6.1.1.2 “Requests for verification MUST be made in writing. Verbal requests are not acceptable and will not stand up in a fair hearing. Workers are required to give the customer notice regarding required verification, when it is due to the agency and the consequences of not verifying timely” *FoodShare Handbook (FSH)* §1.2.4.1; 7 CFR 273.2(c)(5)

When the Petitioner called the agency to report the children in the home again, the agency should have issued a Notice of Proof needed requesting verification of the living arrangement. There is no indication in the record that the agency acted upon the reported change by issuing a request for verification. As such, the agency cannot now deny additional benefits for those children, if the Petitioner is entitled to those benefits.

I note to the agency that under the Social Security Program Operations Manual, the Social Security income must, in fact, be made available for the beneficiary’s immediate support and that the Representative Payee has a legal duty to make it available for the person’s support. “A payee must use benefits to provide for the beneficiary’s **current needs** such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs.” *Emphasis added.* POMS § GN 602.001 So, the funds are, by law, available to [REDACTED] and therefore, available to the Petitioner’s household. The only conceivable exception would be if there is evidence that [REDACTED]’s payee is withholding the money from [REDACTED].

There was some mention that [REDACTED] and [REDACTED]’s mother received FoodShare benefits for them in March, April and May 2016, and as such, Petitioner may not receive those benefits per *FSH* §3.2.1.1, which states that a child may only be on one case, at any given time. However, there is no evidence in the record showing that [REDACTED] and [REDACTED] were on their mother’s FoodShare case. If they were, then their mother might be liable for an overpayment of benefits.

In summary, the agency will have to re-determine the Petitioner’s benefits for March, April and May 2016, including [REDACTED] and [REDACTED] in the household and any income that is available to [REDACTED]/[REDACTED]. (Petitioner should be warned that this might reveal an overpayment of benefits to her.) If the Petitioner disagrees with that re-determination, the Petitioner will have to file a NEW appeal.

CONCLUSIONS OF LAW

The agency did not correctly exclude [REDACTED] and [REDACTED] from Petitioner’s household for the months of March 2016–May 2016.

THEREFORE, it is

ORDERED

That the agency re-determine the Petitioner’s benefits for the months of March 2016, April 2016 and May 2016, including [REDACTED] and [REDACTED] in the household. The agency shall take all administrative steps to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

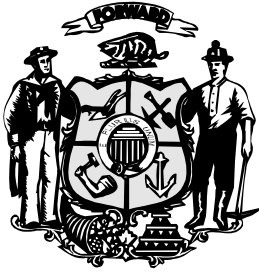
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this _____ day of July, 2016.

\s _____
Mayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 19, 2016.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability